IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4394 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

BABUBHAI G BAROT

Appearance:

1. Special Civil Application No. 4394 of 2001

MR HARDIK C RAWAL for Petitioner No. 1

MR BA VAISHNAV for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 08/05/2002

ORAL JUDGEMENT

#. Heard Mr.H.C.Rawal, learned advocate appearing on behalf of the petitioner Corporation and Mr.B.A.Vaishnav, learned advocate for respondent workman.

#. The petitioner Corporation has challenged the award

passed by the Industrial Tribunal, Ahmedabad in Reference [IT] No.309/1996 dated 27th September, 2000, wherein the Industrial Tribunal has granted wages for the period from 13th March, 1995 upto 30th April, 1995 and also directed the petitioner Corporation to appoint Shri Mirajbhai Barot who is son and / or dependent of the workman who has retired, in any post of Class III and / or IV cadre as per his qualification and further directed the petitioner Corporation to compensate the financial loss for being appointed the son of the retired employee.

#. This Court has passed order on 25th June, 2001 and relied upon decision of this Court in Special Civil Application No.6100/ 1987 issued RULE returnable on 31st July, 2001 and also granted ad-interim relief in terms of para-9[C] of the prayer clause. Learned advocate Mr.H.C.Rawal appearing on behalf of the petitioner Corporation has submitted that the tribunal has committed error in granting the relief in favour of the respondent. Mr.Rawal, learned advocate has also submitted that it is undisputed between the parties that the respondent workman was not declared unfit by the Civil Surgeon. No doubt, the workman was sick for period of two years and requested the authority to send him for medical examination before the Civil Surgeon. But considering the fact that his date of retirement is approaching just after two months, the Corporation has thought it fit not to send the workman for medical examination. Therefore, learned advocate Mr.Rawal submits that as per the settlement arrived between the petitioner Corporation and the Employees Union which provides that compassionate appointment shall be in case if any employee is declared unfit by the Civil Surgeon. But in the present case, the facts reveal that the respondent workman was not declared unfit by the civil surgeon. Despite of this fact, the Tribunal has passed the award in favour of the workman granting the relief contrary to the settlement. Mr.Rawal, learned advocate has relied on decision of this Court [Coram : B.C.Patel, J.] rendered in Special Civil Application No.6100 / 1987 dated 12th January, 2001, wherein identical issue has been examined by this Court and come to the conclusion that "it is very clear that in case of death in the circumstances pointed out in the aforesaid decision, qualified person can be appointed under the kith and kin policy or if he has become permanently disabled while on duty, then as per the policy of the Corporation, the person can be appointed and not otherwise".

#. Relying upon observations made in the aforesaid decision, learned advocate Mr.Rawal submits that the

respondent workman has already been retired from service on 20th April, 1995 and therefore, in such circumstances, the tribunal has committed gross error in granting the relief to the respondent workman.

#. Learned advocate Mr.Biren Vaishnav on behalf of the respondent workman has submitted that the respondent workman remained absent for the period from 12th July, 1993 to 29th April, 1995 because of sickness and therefore, the workman had requested the Depot Manager to send him for medical examination to Civil Surgeon but his request was turn down by the Divisional Controller, Ahmedabad and thus, the request though made by the respondent workman, was not considered and thereafter on 20th April, 1995 the respondent workman has retired from services of the petitioner Corporation. Therefore, according to learned advocate Mr.Vaishnav, it was the duty of the Corporation to send him for medical examination to Civil Surgeon. Not to send the respondent workman for medical examination, the workman was not able to get certificate of unfitness and therefore, the petitioner Corporation should give compassionate appointment to the dependent of the workman as per the terms of the settlement and policy of the petitioner Corporation. Therefore, Mr.Vaishnav, learned advocate, the tribunal has rightly exercised powers and granted relief in favour of the respondent workman and no error has been committed by the Tribunal which required to be interfered with by this Court while exercising the powers under Article 226 and 227 of the Constitution.

#. I have considered submissions of the learned advocates for the parties. Undisputed facts between the parties reveals that the respondent workman was not declared unfit by the civil surgeon during the course of employment. The respondent workman was remained absent because of sickness for the period from 12th July, 1993 to 29th April, 1995 and for this period, various leave as sought by the workman, were sanctioned by the petitioner Corporation. There is clear settlement between the petitioner Corporation and the recognised union dated 21st December, 1989, wherein Item [30] provides for compassionate appointment to the employee who has been declared unfit by the civil surgeon. In the background of undisputed facts between the parties stated above, it clearly transpires that the respondent workman was not declared unfit by the civil surgeon, no doubt, he was sick and remained on leave for the period from 12th July, 1993 to 29th April, 1995 and his request which was forwarded by the Depot Manager to Ahmedabad Divisional Controller for sending the workman for medical

examination before the Civil Surgeon was not conceded to and no order has been passed by the Divisional Controller, Ahmedabad. In such circumstances, when such request made by the respondent workman just before two months prior to retirement, the petitioner Corporation has rightly not considered the request made by the respondent workman. Therefore, the tribunal has committed gross error in considering the fact and treating the respondent workman as if he has become unfit and declared unfit because of sickness but the tribunal has grossly overlooked the fact that the respondent workman has not been declared unfit by the Civil Surgeon as required under the clear terms of the settlement and policy of the Corporation and therefore, in such situation, benefit of settlement cannot be given to the son of the respondent workman. Therefore, according to my opinion, the tribunal has committed error while ignoring the terms of the settlement dated 21st December, 1989 [Item No.30] and award contrary to the settlement passed by the labour court, cannot be sustained. Therefore, basic error seems to have committed by the tribunal which is found apparently from the face of the record and hence, interference of this Court is called for.

#. The view taken by this Court in identical case in case of G.S.R.T.C. V. PARSHOTTAM MOHANLAL PATEL in Special Civil Application No.6100 / 1987 dated 12th January, 2001, wherein observations made in page 7 is quoted as under :-

"Thus, reading the circulars it is very clear that if the workman has expired or has become permanently disable while on duty and there is no any other earning member in the family, one member of the family of such person can make an application directly to the Corporation. The name is required to be considered with others, i.e. when the applications are called for from the Employment Exchange for the vacancies. In the instant case nothing is placed on the record and in view of this circular also the Tribunal ought to have rejected the claim of the workman."

In view of observations made by this Court in above referred case and undisputed facts which are on record, the tribunal has committed gross error in granting relief in favour of the respondent which is

obviously contrary to the binding settlement.

#. In the result, present petition is allowed. The award passed by the Industrial Tribunal in Reference No.309 / 1996 dated 27th September, 2000 is hereby quashed and set aside. Rule is made absolute. No order as to costs.

Date : 8-5-2002 [H.K.Rathod, J.]

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